

## ORDINANCE #21-10

### AN ORDINANCE TO AMEND AND RESTATE SECTIONS 18-236 THROUGH 18-244 OF ARTICLE VII, CHAPTER 18 OF THE WILLIAMSBURG CODE IN ORDER TO CONFORM TO CERTAIN CHANGES IN APPLICABLE VIRGINIA LAW EFFECTED BY SENATE BILL 1398 ENACTED AT THE 2021 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

WHEREAS, at its 2021 Session, the Virginia General Assembly enacted SB 1398 that amended and reenacted various sections of Virginia Code Title 58.1 pertaining to transient lodging taxes chargeable by various Virginia counties, which sections include §58.1-3823, subsection C that authorizes James City and York Counties to levy an additional \$2 per room per night transient occupancy tax; and

WHEREAS, the Bill also added §§ 2.2-2320.2 and 59.1-3818.8 that contain amended definitions pertinent to retail sales and use taxes and transient lodging taxes; and

WHEREAS, for many years the City of Williamsburg has levied a transient lodging tax as authorized by its City Charter (Chapter VII, Section 33), and beginning in 2017 has also levied \$2.00 per room per night additional transient occupancy tax in accordance with Virginia Code § 58.1-3828C; and

WHEREAS, for purposes of consistency, City Council deems it desirable to amend and reenact Sections of Chapter 18, Article VII of the City Code to include and conform with various definitions referenced in Virginia Code §58.1-3818.8;

NOW, THEREFORE, it is hereby ORDAINED that Article VII, Chapter 18 of the Williamsburg Code are hereby amended and restated as follows:

#### **Sec. 18-236. Definitions.**

The following words and phrases, when used in this article, shall, for the purposes of this article, have the following respective meanings, except when the context clearly indicates a different meaning:

"Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.

"Accommodations fee" means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.

"Accommodations intermediary" means any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the

right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider.

"Accommodations intermediary" does not include a person:

1. If the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person; or

2. Who facilitates the sale of an accommodation if (i) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person.

"Accommodations provider" means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

*Director* means the director of finance of the city and any of his duly authorized agents.

"Discount room charge" means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

"Room charge" means the full retail price charged to the customer by either a accommodations provider directly or the accommodations intermediary for the use of the accommodations, including the cost of all meals, food and other services when furnished with such accommodations for a unit price, and also including any accommodations fee, before taxes.

*Transient* shall mean any person who, for a period of not more than 90 consecutive days or 30 days in the case of the \$2.00 tax levied under Section 18-237(b) hereinbelow, either at the transient's own expense or at the expense of another, purchase accommodations as defined in this section. Accommodations employees who work at least 20 hours per week for such accommodations and reside therein do not fall within the definition of transient. Persons who fall within the exemption set forth in section 21-2 of the Williamsburg Code (hotel/motel definition) shall pay the taxes hereunder for the first 90 days of continuous occupancy, notwithstanding that such continuous occupancy may exceed 90 days.

#### **Sec. 18-237. Tax levied.**

- (a) There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law on each transient, a tax equivalent to five percent of the total room charge paid by or for any such transient to the accommodations provider, or if sold through an accommodations intermediary, to such accommodations intermediary. Such tax shall be collected from such customer at the time and in the manner provided by this article.
- (b) In addition to the tax provided for in subsection (a) above, there is hereby levied and imposed an additional transient occupancy tax of \$2.00 per night for the use or



possession of such accommodations, but excluding campground sites, rented and continuously occupied by the same individual or same group of individuals for 30 or less days. The revenues collected from such additional tax shall be distributed and expended as provided in Code of Virginia, § 58.1-3823C.

**Sec. 18-238. Collection procedure.**

Every accommodations provider or accommodations intermediary, as the case may be, that receives any payment of a room charge as defined hereinabove upon which of a tax levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying such room charge at the time payment is made. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

**Sec. 18-239. Reports and remittance of tax collected.**

- (a) It shall be the duty of every accommodations provider or accommodations intermediary, as the case may be, required by this article to collect and pay to the city the taxes imposed by this article and to make a report thereof setting forth such information as the director may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. Such reports shall be delivered to the director of finance along with the tax required to be collected. Such reports and remittances shall be made to the city's finance department on or before the 20th day of the calendar month following the month being reported. Such records shall be kept and preserved for a period of five years. The director or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this section, and to make transcripts of all or any parts thereof.
- (b) Any accommodations provider or accommodations intermediary, as the case may be, collecting the tax on transactions exempt or not taxable under this article shall transmit to the director such erroneously or illegally collected tax unless and until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

**Sec. 18-240. Interest and penalties upon failure or refusal to remit tax.**

If any accommodations provider or accommodations intermediary, as the case may be, shall fail or refuse to remit the taxes collected as required by this article, there shall be imposed, in addition to other penalties provided in this article, a specific penalty to be added to the tax in the amount of ten percent of the tax due or \$10.00, whichever is the greater; provided, however, that the penalty in no case shall exceed the amount of tax due. In addition, interest at the rate of ten percent per annum shall commence the first day following the day such taxes are due.

**Sec. 18-241. Enforcement.**

The director shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall be the duty of the director to ascertain the name of every accommodations provider or accommodations intermediary, as the case may be, liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The director shall have all of the enforcement powers as authorized by article 1, chapter 31, of Title 58.1 of the Code of Virginia for purposes of this article and may request the commissioner of the revenue to assist in such enforcement.

**Sec. 18-242. Report of taxes collected; remittance; preservation of records.**

It shall be the duty of every accommodations provider or accommodations intermediary, as the case may be, required by this article to pay to the city the taxes imposed by this article and to make a report thereof setting forth such information as the director may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. Such reports shall be delivered to the director of finance along with the tax required to be collected. Such reports and remittances shall be made to the city's finance department on or before the 20th day of the calendar month following the month being reported. Such records shall be kept and preserved for a period of five years. The director or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.

**Sec. 18-243. Tax immediately due and payable upon cessation of business.**

Whenever any person required to collect and remit the tax imposed and levied by this article shall go out of business, dispose of his business or otherwise cease to operate, all of such taxes collected shall thereupon be reported and remitted to the director and remitted to the department of finance.

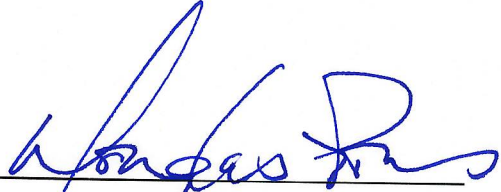
**Sec. 18-244. Exemptions from tax.**


No tax shall be payable under this article on charges for lodging paid to any hospital, medical clinic, convalescent home or home for the aged.

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

This Ordinance shall be in effect immediately upon adoption.

Adopted: September 9, 2021

  
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Douglas Pons, Mayor

Attest:   
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Sandi L. Filicko, City Council Clerk